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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,731	09/24/2003	Triveni P. Shukla	00030-001	6418
7590 11/18/2004 Timothy J. Fullin Fullin Legal Services LLC 711 North Milwaukee Avenue Libertyville, IL 60048			EXAMINER PADEN, CAROLYN A	
			ART UNIT 1761	PAPER NUMBER

DATE MAILED: 11/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/669,731

Applicant(s)

SHUKLA ET AL.

Examiner

Carolyn A Paden

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-26 is/are allowed.
- 6) ☒ Claim(s) 1-4 and 27-36 is/are rejected.
- 7) ☒ Claim(s) 5-13 and 37 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 35 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Young (6,048,564).

Young discloses an emulsified composition useful as a reduced fat shortening that contains water and konjac as a gelling agent and a lipid phase (see abstract). From example 1, it can be seen that the water and lipid content of Young falls within the range that is shown in the claims. The fats contemplated in the product are shown at column 7, lines 36-48. Some of these oils are the same as those set forth in the application at page 4, lines 79-80. So even though the oils are not classified as omega

oils, one of ordinary skill in the art would have surmised that the specific oils mentioned in the specification are omega oils. The fat content used in Young is described in the examples as being about 25-weight percentage. The amount of dietary fiber in the product is disclosed at column 4, lines 7-10. In this case Young selected konjac gel as a dietary fiber source for his examples but other sources of dietary fiber are shown in claim 4 and column 3, lines 11-23 of Young. It would have been obvious at the time of applicants' invention to modify the konjac of Young in order to fine-tune the characteristics of the texture of the product so that it could be formulated to use in a variety of foods.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 27-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Young (6,048,564).

Young discloses an emulsified composition useful as a reduced fat shortening that contains water and konjac as a gelling agent and a lipid phase (see abstract). From example 1, it can be seen that the water and

lipid content of Young falls within the range that is shown in the claims.

The fat content used in Young is described in the examples as being about 25-weight percentage. The amount of dietary fiber in the product is disclosed at column 4, lines 7-10. In this case Young selected konjac gel as a dietary fiber source for his examples but other sources of dietary fiber are shown in claim 4 and column 3, lines 11-23 of Young. Claims 2-4 appear to differ from Young in the recitation that the product has a specific omega fatty acid content. The fats contemplated in the product are shown at column 7, lines 36-48. Some of these oils are the same as those set forth in the application at page 4, lines 79-80. So even though the oils are not classified as omega oils, one of ordinary skill in the art would have surmised that the specific oils mentioned in the specification are omega oils. It would have been obvious at the time of applicants' invention to utilize the oils of Young in order to provide the omega fatty acid content that is set forth in the claims. Claim 27 appears to differ from the reference in the suggestion of the particular type of shear used in the process but no unobvious or unexpected result is seen to flow from this recitation. Given the fact that "micro-particulation" is defined to include homogenization, no unobvious or unexpected result is seen from the selection of the particular

mixing method of the claim, particularly where an emulsion finally results from the process.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Cox et al. (5,219,599) and (5,213,829, not specifically described below).

Cox discloses artificial adipose. At example 2 the composition is disclosed to contain pork blood plasma liquid and partially hydrogenated safflower oil and dietary fiber gel. The fibers in Cox are the gums shown at column 6, lines 62-66. Omega fatty acids are contemplated as fat or oil sources at column 6, lines 20-26. The amounts of each of these ingredients would have led one of ordinary skill in the art to expect that the amount of water or aqueous material and dietary fiber falls within the range of the claims. The step of emulsification is set forth in example 3, column 12, line 43.

Claims 1-4, 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cox (5,219,599 and (5,213,829, not specifically described below).

Cox discloses artificial adipose. At example 2 the composition is disclosed to contain pork blood plasma liquid and partially hydrogenated safflower oil and dietary fiber gel. The fibers in Cox are the gums shown at column 6,

lines 37-66. Omega fatty acids are contemplated as fat or oil sources at column 6, lines 20-26. The amounts of each of these ingredients would have led one of ordinary skill in the art to expect that the amount of water or aqueous material and dietary fiber falls within the range of the claims. The step of emulsification is set forth in example 3, column 12, line 43. Claim 1 does not appear to differ from Cox at all. Claims 2-4 appear to differ from Cox in the suggestion of a particular amount of the omega fatty acids in the product. But given the fact that omega fatty acids are a suggested source of fatty acids in Cox, it would have been obvious to use them as a sole source of fatty acids because of their known nutritional benefit in foods. Claims 35 and 36 are directed to product by process claims. The fact that a product may have been made by a different process does not alone constitute unobviousness.

Claims 1, 35 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Jenkins et al (5,294,457 and 5,380,542, not specifically described below).

Jenkins discloses thermo-irreversible gel particles for use in foods. At example 1 oatrim is combined with kappa carrageenan or iota carrageenan and water and processed into a gel that is a fat mimic. Then

meat mixture is formed by combining the fat mimic (shown on Table 1 to fall within the range of the claims) with pork trim, meat and water in the amount of the claims. With regard to claims 35 and 36, process limitations do not carry any weight in product claims.

Claims 5-13 and 37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 14-26 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private

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PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Carolyn Paden
CAROLYN PADEN 11-15-04
PRIMARY EXAMINER
GROUP 1800-1761